

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayer

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Northern States Power
Company's Petition for a Variance From
Competitive Bidding for Biomass Phase II
Resources

ISSUE DATE: September 11, 2000

DOCKET NO. E-002/M-96-1405

ORDER APPROVING AMENDMENT TO
BIOMASS POWER PURCHASE
AGREEMENT

PROCEDURAL HISTORY

On January 11, 2000, the Commission issued an Order which, among other things, approved a Purchase Power Agreement (PPA) between Northern States Power Company (NSP) and EPS/Beck Power L.L.C. (EPS/Beck) for a 25 MW whole-tree burning facility, and directed NSP to report within 5 months what action, if any, it had taken on its option (created in the PPA) to expand the project up to 75 MW.

On the same day, it issued an Order approving a PPA between NSP and St. Paul Cogeneration L.L.C.(SPC) for a 25MW facility that would use metro area waste wood as a fuel source.

On May 19, 2000, NSP filed a petition seeking Commission approval of the First Amendment to its biomass PPA with EPS/Beck Power, L.L.C. The First Amendment modified the original PPA to expand the size of the project to 50 MW and set a new reduced capped price for the entire 21 year term of the contract.

On June 9, 2000, the Minnesota Department of Commerce (the Department) filed comments recommending approval of the First Amendment subject to certain reporting requirements.

On June 19, 2000 NSP submitted Reply Comments, agreeing to the reporting requirements recommended by the Department and stating it would work with the Department to identify a compliance reporting schedule.

On June 23, 2000, St. Paul Cogeneration LLC (SPC) submitted comments objecting to NSP's petition, objecting that the amended PPA was contrary to Subdivision 7 of Minn. Stat. § 216B.2424.

On July 3, 2000, EPS/Beck replied to the SPC comments, arguing that this is not a new project, since the expansion option (up to a possible 75 MW) was part of the original PPA approved by

the Commission. EPS/Beck also contended that SPC has presented no evidence that SPC's ability to obtain waste wood, nor the price of such wood, would be adversely affected.

On July 31, 2000, SPC responded to the EPS/Beck reply.

The Commission met on August 17, 2000 to consider this matter.

FINDINGS AND CONCLUSIONS

I. NSP'S REQUEST

As directed by the Commission in its January 11, 2000 Order in this matter¹, NSP has reported the action it has taken with respect to the escalation clause in its contract (PPA) with EPS/Beck. The escalation clause gave NSP the option (for a six month period following Commission approval of the contract) to expand the EPS/Beck project up to 75MW.

NSP reported that it had determined to exercise the option to expand the EPS/Beck project to 50 MW in size and that the parties had executed an amendment to the PPA to implement the larger size and lock in the lower capped price over the 21 year life of the contract. In its report, NSP requested Commission approval for that amendment.

In reply comments, NSP agreed to the reporting requirements recommended by the Department (see Section II below) and stating it would work with the Department to identify a compliance reporting schedule. See Ordering Paragraph 2 on page 5 of this Order.

II. THE DEPARTMENT'S COMMENTS

The Department stated that the lower net present value (NPV) of the project justified approval of the amended PPA in spite of an average price that exceeds the upper bound originally recommended by the Department.

The Department also recommended that the Commission require NSP to file annual reports with the Commission on funds received from the federal Department of Energy, production tax credits and property tax exemptions, annual return on equity (ROE) and associated cost adjustments, and the actual fuel costs and any shared savings.

III. SPC'S COMMENTS

In its initial comments, SPC alleged that EPS/Beck's intention to use metro area waste wood as a fuel source during the first six years of the project would have an adverse impact upon SPC's

¹ ORDER APPROVING POWER PURCHASE AGREEMENT WITH EPS/BECK POWER, LLC (January 11, 2000) at page 6.

fuel source in direct violation of Minn. Stat. § 2424, subd. 5. SPC stated that a 70-mile radius is the economic viability point for trucking fuel to the SPC site. SPC requested that if the Commission approved the NSP petition, the Commission explicitly prohibit EPS/Beck from utilizing waste wood obtained from within a 70-mile radius of the SPC site.

Responding to EPS/Beck's reply, SPC reiterated its conviction that Subdivision 7 of Minn. Stat. § 216B.2424 explicitly forbids approval of the NSP-EPS/Beck amendment. SPC contended that the amendment initiates a new project that will have an adverse impact on SPC's already approved project. SPC also contended that the amendment will have an adverse impact upon the ratepayers. SPC suggested that the Commission require EPS/Beck to file a plan for meeting its fuel needs for the first six years of its operations for both a 25 MW and 50 MW level so it can be determined whether the SPC and EPS/Beck projects will both be able to meet their fuel source needs.

IV. COMMISSION ANALYSIS

A. Inapplicability of Subdivision 7 of Minn. Stat. § 216B.2424

Subdivision 7 of Minn. Stat. § 216B.2424 cited by SPC as controlling this matter states:

The commission may not approve a project proposed after the effective date of this act which would have an adverse impact on the ability of a project approved before the effective date of this act to obtain an adequate supply of the fuel source designated for the project.

Subdivision 7 does not apply, however, because the amendment in question does not initiate a new "project" as SPC contended. Instead, the amendment merely changes contract language to reflect the fact that NSP has exercised an option it has under a project (contract) already approved by the Commission. Exercising the option simply increases the amount of electricity NSP will purchase under that contract from 25MW to 50MW.

SPC cited several Orders that it argued established that the Commission treats "expanded projects" as new projects. The Commission Orders cited by SPC are not controlling. Unlike the current case, none of the Orders cited dealt with an enlargement of activity due to the exercise of an option to do so that was part of an already approved contract.

The Orders cited by SPC dealt with new services areas proposed by gas utility companies. Although each involved an expansion of service territory or to new customer classes, none of the expansions in question resulted from the exercise of an option in an existing (approved) contract. In addition, expansion of service area by its nature, involves unique new features (i.e. the new land served). As such, the Commission properly viewed the proposals to serve the new territories as separate, distinct projects.

By contrast, NSP's amendment simply increases the amount of product (electricity) to be purchased, an amount, moreover, which has already been approved in principle by the

Commission in the January 11, 2000 Order authorizing NSP to increase (at its option) the size of the PPA to 75MW. Hence, the amendment is properly viewed as part of an already approved contract rather than as a new project.

B. Applicability of Subdivision 5(d) of Minn. Stat. § 216B.2424

The legislation specifically applicable to NSP's request is Subdivision 5(d) of Minn. Stat. § 216B.2424, which states:

If a public utility subject to this section exercises an option to increase the generating capacity of a project in a contract approved by the commission prior to the effective date of this act to satisfy the mandate in this subdivision, the public utility must notify the commission by September 1, 2000 that it has exercised the option and include in the notice the amount of additional megawatts to be generated under the option exercised. Any review by the commission of the project after exercise of such an option shall be based on the same criteria used to review the existing contract.

The application of this statute to the amendment in question could not be clearer. In the words of the statute, NSP is a public utility that has exercised an option to increase the generating capacity of a project. The option exercised was in a contract approved by the Commission prior to the effective date of the act (i.e. prior to April 25, 2000) to satisfy the biomass mandates. The NSP-EPS/Beck PPA is such a contract, having been approved by the Commission in an Order issued January 11, 2000.

Next, the statute specifies the utility's (NSP's) obligation to notify the Commission by September 1, 2000 that it has exercised the option and to include in the notice the amount of additional megawatts to be generated under the option exercised. NSP has done so.

Finally, the statute directs the Commission to review the project-after-exercise-of-the-option using the same criteria it used to review the existing contract. In its January 11, 2000 Order, the Commission approved the NSP-EPS/Beck PPA based on the finding that it was reasonable and in the public interest. The Commission, therefore will assess whether the project-after-exercise-of-the-option meets same criteria: whether it is reasonable and in the public interest.

The Commission notes that in its January 11, 2000 Order it already countenanced NSP increasing the size of its PPA with EPS/Beck to 50MW, at NSP's option.² No subsequent information has altered that assessment. In fact, the Commission notes that EPS/Beck, as an inducement to NSP to exercise the expansion option, has agreed to a new lower capped price applicable to the entire 50 MW for the entire length (21 years) of the project. While SPC has speculated regarding possible increase in the price of its fuel due to EPS/Beck using the same fuel type (waste wood) during the first six years of the project, the record does not indicate that when the two projects (CPC's and EPS/Beck's) are taken together over the 21-year life of the PPAs that ratepayers would be paying higher rates due to EPS/Beck using metro waste wood for the first six years.

In fact, contrary to SPC's assertion that the amendment will result in higher rates, the Commission finds that this amendment is likely to increase the net benefit to ratepayers (lower cost, lower rates). Even if, as SPC speculated, it experiences somewhat higher waste wood costs during the six years EPS/Beck competes with it for waste wood in the metro area, it appears highly improbable that this would nullify the ratepayer benefit of the lower capped price for EPS/Beck's much larger amount of energy (50MW) over the 21 year life of the contract achieved by this amendment.

Regarding SPC's assertion that the supply of waste wood in the metro area is insufficient to meet the demand of both projects, the Commission finds the record insufficient to establish this. Moreover, the Commission notes that NSP, the purchaser in both PPAs and the party subject to the legislature's biomass mandates, does not believe EPS/Beck's use of waste wood during the first six years will jeopardize either producer's ability to deliver, as suggested by SPC. In these circumstances, the Commission finds that it would be unreasonable to second guess the parties and interfere in these contractual relations, as SPC requested, by prohibiting EPS/Beck from using waste wood from within a 70 mile radius of SPC's generation site.

Finally, the Commission finds that its approval of the amendment will allow the EPS/Beck project to accelerate its efforts, commit to equipment and presumably close its financing. Approval will also allow NSP to focus its efforts on fulfilling the remainder of the biomass mandate (50MW) consistent with the recent legislative modifications.³

² In fact, the contract approved by the Commission in its January 11, 2000 Order gave NSP the option to expand the project up to 75MW.

³ Effective April 25, 2000, Minn. Stat. § 216B.2424 was amended, expanding the definition of biomass and providing a procedure to address any biomass mandate amounts not under contract by August 1, 2000. See Minn. Laws 2000, Chapter 443.

V. COMMISSION ACTION

Based on the forestated considerations and the comments of all parties, the Commission concludes that the amendment increasing the size of the NSP-EPS/Beck PPA from 25MW to 50WM is reasonable and in the public interest. The Commission will, therefore, approve it.

ORDER

1. The Commission hereby approves the May 5, 2000 First Amendment to Biomass Power Purchase Agreement By and Between Northern States Power Company and EPS/Beck Power, L.L.C. filed with the Commission on May 19, 2000.
2. NSP shall file annual reports with the Commission on
 - (1) funds received from the federal Department of Energy,
 - (2) production tax credits and property tax exemptions,
 - (3) annual return on equity (ROE) and associated cost adjustments, and
 - (4) the actual fuel costs and any shared savings.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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